IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.96 OF 2006

WITH

WRIT PETITION (L) NO. 205 OF 2006

Mahadeo P. Mandavkar .. Petitioner.

Versus

National Textile Corpn. .. Respondent.

Ms. Apoorva Kaiwar for the petitioner.

Ms. Meena Doshi for the respondent.

WITH

WRIT PETITION (L) NO. 205 OF 2006

N.T.C. (M.N.) Ltd., & Anr. .. Petitioners.

vs.

Mahadev P. Mandarkar .. Respondent.

Ms. Meena Doshi for petitioners.

Ms. Apoorva Kaiwar for respondent.

CORAM: S.U. KAMDAR, J.

DATED: 13TH MARCH, 2006.

P.C. :

. The learned advocate appearing for N.T.C. states that they will get the petition numbered within a period of one week from today.

2. The present petitions arise out of a common order passed by the Industrial Court by which the service of the worker has been reinstated with 50% back wages from the date of the approach notice dated 16.4.1993 onwards. The worker has challenged the said order by contending that the Industrial Court has erred in granting back wages of only 50% and modifying the order of the 12th Labour Court who had granted full back wages from the date of the approach notice dated 16.4.1993. On the other hand, the NTC who is an employer has challenged the said order contending that the Industrial Court has erred in granting reinstatement to the petitioner because in fact he was employed in unit no. 2 and the said unit no. 2 has been closed down in May 2002 after obtaining appropriate permission of closure from the State Government and thus question of reinstating of the workman does not arise.

3. In my opinion both the present petitions are required to be rejected. Firstly, the contention of the worker that he is entitled to full back wages and not the 50% as awarded by the Industrial Court. I am of the opinion that the trial court in para. 14 of the said order has considered the relevant circumstances such as that unit no. 2 belonging to NTC was lying closed from 1982 and was ultimately required to be closed down and thus it is in the fitness of the things that the worker cannot be given full back wages. In my opinion, the said order is a discretionary order passed by the Industrial Court and based on sound discretion and in that view of the matter, I do not find any reason to interfere with the same in writ jurisdiction under Article 226 of the Constitution of India.

4. In so far as the petition of the employer is concerned, in which it is contended that the Industrial Court has erred in granting reinstatement to the worker inspite of the fact that unit no. 2 has been closed down after closure

permission was obtained in May, 2002. I am of the view that Labour Court as well as the Industrial Court have recorded a finding of fact that the petitioner was reporting to the duty all throughout. In fact subsequent to the order passed by the Apex Court holding that the employees of the erstwhile mill are the employees of NTC. The petitioner issued approach notice dated 16.4.1993 and thus the workman was entitled to employment with effect from 16.4.1993. In that light of the matter, the order passed by the Industrial Court cannot be faulted with. In so far as the contention of closure is concerned, it is an admitted position that NTC though obtained permission of closure in May, 2002, has not terminated the services of the worker herein. Thus, the contract of employment continued and remained subsisting between NTC and the said worker. In my opinion, the permission of closure by itself does not bring to an end the contract of employment but it requires to be followed up in accordance with law by terminating the services and offering necessary compensation closure as required under the provisions of the Act.

5. Apart therefrom there is also a finding by the Industrial Court that NTC absorbed the employees of unit no. 2 in unit no. 1 of their mill and therefore also the contention of the NTC can not be accepted. Though the Industrial Court has directed reinstatement of the worker in my opinion it will be still open for the NTC to pass appropriate order of termination of the worker's services in accordance with the provisions of the Act pursuant to the obtaining of the closure permission. It will be also equally open to the worker to challenge such order of termination by the NTC in accordance with law. With the aforesaid observation, both the petitions fail and the same are dismissed accordingly. No order as to costs.